

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ERIC JOHNSON,

No. C 11-2738 WHA (PR)

Petitioner,

ORDER OF DISMISSAL

v.

SUSAN HUBBARD, Warden,

Respondent.

(Docket No. 3)

Petitioner, a California state inmate, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court may not be granted unless the prisoner has first exhausted state judicial remedies, either by way of a direct appeal or in collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every issue he or she seeks to raise in federal court. *See* 28 U.S.C. 2254(b),(c); *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). Petitioner has the burden of pleading exhaustion in his habeas petition. *See Cartwright v. Cupp*, 650 F.2d 1103, 1104 (9th Cir. 1981).

Petitioner has not done so; nor has he presented any exceptional circumstances to excuse his doing so. *See Granberry*, 481 U.S. at 134. In his form petition, he states that he has not presented his claim to any other court (Pet. 6). Petitioner must present his claim to the California Supreme Court before it may be considered in federal court.


1 The petition is therefore **DISMISSED** without prejudice to refiling after available state
2 judicial remedies are exhausted. Rule 11(a) of the Rules Governing Section 2254 Cases now
3 requires a district court to rule on whether a petitioner is entitled to a certificate of appealability
4 in the same order in which the petition is dismissed. Petitioner has failed to make a substantial
5 showing that a reasonable jurist would find this court's dismissal of the petition debatable or
6 wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of
7 appealability is warranted in this case.

8 Petitioner's application to proceed in forma pauperis (docket number 3) is **GRANTED** in
9 light of petitioner's lack of funds.

10 The clerk shall enter judgment and close the file.

11 **IT IS SO ORDERED.**

12 Dated: June 30, 2011.

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14 WILLIAM ALSUP
15 UNITED STATES DISTRICT JUDGE
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